

CHAPTER NO. 310

HOUSE BILL NO. 2015

By Representative Fitzhugh

Substituted for: Senate Bill No. 2088

By Senators Henry, Fowler

AN ACT to amend Tennessee Code Annotated, Title 4, Title 8, and Title 9 relative to state government and audit committees.

WHEREAS, governmental entities have a responsibility to be prudent in their expenditure of public funds; and

WHEREAS, there have been in the public sector major fraud-related business failures in recent years; and

WHEREAS, primary responsibility for the prevention and detection of fraud rests with the management of an entity; and

WHEREAS, new auditing standards provide guidance to management on creating antifraud programs and controls; and

WHEREAS, there is a need for governmental entities to have an audit committee that reports to the governing body; and

WHEREAS it is important that the members of the audit committee are adequately trained and educated to meet their responsibilities for oversight of the management of the governing body; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding Sections 2 through 10 as a new Chapter to be designated as follows:

SECTION 2. This Chapter shall be known and may be cited as the "State of Tennessee Audit Committee Act of 2005."

SECTION 3. (a) A state governing board, council, commission, or equivalent body that has the authority to hire and terminate its employees shall create an audit committee; or

(b) A state governing board, council, commission, or equivalent body that is responsible for the preparation of financial statements, whether included in the financial statements of other entities or free standing, shall create an audit committee subject to paragraph (c).

(c) A state governing board, council, commission, or equivalent body subject to paragraphs (a) and (b) may be excepted from the requirement to form an audit committee only upon the approval of the comptroller of the treasury.

SECTION 4. (a) An audit committee created pursuant to this chapter shall develop a written charter addressing the audit committee's purpose, powers, duties, and mission.

(b) The comptroller of the treasury shall establish guidelines for creation of an audit committee charter and shall review the proposed charter to determine whether the charter contains the minimum necessary requirements.

(c) The charter, and any subsequent amendments shall be presented to the full state governing board, council, commission, or equivalent body and the comptroller of the treasury for approval.

SECTION 5. (a) The audit committee shall be a standing committee of the state governing board, council, commission, or equivalent body.

(b) An audit committee created pursuant to this chapter shall have at a minimum three (3) members chosen as prescribed in the audit committee charter.

(c) (1) The audit committee's charter shall provide for the frequency of and procedures relative to conducting meetings.

(2) The audit committee shall meet upon the request of the comptroller of the treasury.

SECTION 6. The responsibilities of an audit committee created pursuant to this chapter include but are not limited to:

- (1) Overseeing the financial reporting and related disclosures especially when financial statements are issued;
- (2) Evaluating management's assessment of the body's system of internal controls;
- (3) Formally reiterating, on a regular basis, to the state governing board, council, commission, equivalent body, or management and staff of the agency to which the audit committee is attached, their responsibility for preventing, detecting, and reporting fraud, waste, and abuse;
- (4) Serving as a facilitator of any audits or investigations of the body to which the audit committee is attached, including advising auditors and investigators of any information it may receive pertinent to audit or investigative matters;
- (5) Informing the comptroller of the treasury of the results of assessment and controls to reduce the risk of fraud; and
- (6) Promptly notifying the comptroller of the treasury of any indications of fraud.

SECTION 7. An audit committee created pursuant to this chapter shall have the power and duty to take whatever actions the audit committee deems necessary in carrying out its responsibilities in this chapter, including but not limited to:

- (1) Seeking information it requires from employees or external parties;
- (2) Meeting with agency management, board, council, commission, or equivalent body members, external and internal auditors, legal counsel, or others as necessary; and
- (3) Requiring internal auditors to report directly to the audit committee.

SECTION 8. (a) An audit committee created pursuant to this chapter shall establish a process by which employees, taxpayers or other citizens may confidentially report suspected illegal, improper, wasteful or fraudulent activity. The detailed information received pursuant to such a report of illegal, improper, wasteful or fraudulent activity or any investigation thereof, except those matters disclosed in final public reports, shall be considered audit working papers and shall be confidential under the provisions of Tennessee Code Annotated, Title 10, Chapter 7.

(b) The provisions of § 8-50-116, shall apply to all state governing board, council, commission or equivalent body employees. In addition, no state governing board, council, commission or equivalent body's employees shall suffer any of the prohibited retaliatory actions specified in § 8-50-116 for reporting or cooperating with the audit committee, internal auditors, or auditors from, or approved by, the comptroller of the treasury, or for reporting any facts to the state governmental body to which the audit committee is attached. Any person who knowingly and willingly retaliates or takes adverse action of any kind against any person for reporting alleged wrongdoing pursuant to the provisions of this chapter commits a Class A misdemeanor.

SECTION 9. (a) Except as noted below, all meetings of an audit committee created pursuant to this chapter shall abide by the notice requirements adhered to by the state governing board, council, commission, or equivalent body to which it is attached.

(b) All meetings of an audit committee created pursuant to this chapter shall be subject to 8-44-101 et seq., except that the audit committee may hold confidential, non-public executive sessions to discuss:

- (1) Items deemed not subject to public inspection under §§ 10-7-503 & 504 and all other matters designated as confidential or privileged under Tennessee Code Annotated;
- (2) Litigation;
- (3) Audits or investigations;
- (4) Information protected by federal law; and
- (5) Matters involving information under Section 8(a) where the informant has requested anonymity.

(c) No business other than that described under subsection (b)(1)-(5) shall be considered during a confidential, non-public executive session by the audit committee.

(d) For purposes of providing notice of a confidential, non-public executive session, the agenda must disclose the general nature of discussion as described under (b)(1)-(5).

(e) A meeting at which both subject matter open to the public and confidential subject matter will be discussed shall be conducted as follows:

(1) All business relating to subject matter that is public in nature shall be conducted first.

(2) At the conclusion of the meeting relating to subject matter that is public in nature, the chair shall announce that the public portion of the meeting is adjourned and that the remainder of the meeting will concern matters that are confidential under (b)(1)-(5). When everyone at the meeting who is not authorized to attend the confidential portion of the meeting has departed, the confidential portion of the meeting shall commence.

(f) The language of this chapter is not intended to prevent the full state governing board, commission, council, or equivalent body from going into confidential, non-public executive session for the purpose of further discussing those matters as described under (b)(1)-(5). All portions of meetings of the full state governing board, commission, council, or equivalent body where matters described under (b)(1)-(5) will be discussed shall be exempt from the provisions of 8-44-101 et seq., provided the full state governing board, commission, council or equivalent body shall abide by the notice requirements of paragraphs (c)-(e) in this section.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 19, 2005


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 6th day of June 2005


PHIL BREDESEN, GOVERNOR